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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

MIS Funding No 1 Pty Limited v Beefeater Sales International Pty Ltd (NSWSC) - loan agreement in connection with managed investment scheme - assignment - restitution - plaintiff entitled to judgment against defendants

Re PJJ Pty Ltd, Richard Dunstan Reynolds and Patphair Investments Pty Ltd (VSC) - real property - modification of three restrictive covenants granted

Pilton Holdings Pty Ltd v Essential Beauty Franchising (WA) Pty Ltd (SASCFC) - franchise agreement - master franchisor's termination of agreement with master franchisee valid - appeal dismissed

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Summaries With Link (Five Minute Read)

MIS Funding No 1 Pty Limited v Beefeater Sales International Pty Ltd [2015] NSWSC 1109

Supreme Court of New South Wales

Ball J

Contract - restitution - plaintiff sought to recover from first defendant amount owing under loan agreement made between third defendant as lender and first defendant as borrower - loan agreement entered in connection with registered managed investment scheme promoted by company which agreed to managed scheme in accordance with investment deed - plaintiff made claim as assignee of third defendant's rights under loan agreement pursuant to loan transfer deed between plaintiff, third defendant and company - first defendant contended plaintiff had not established funds were advanced and that, even if funds paid to company, they were not paid to acquire "Hectares" as required by cl 11 of loan agreement - held: more likely than not that amount was advanced and paid directly to company as contemplated by cl 11 of loan agreement - company complied with c 11 of loan agreement - plaintiff entitled to judgment against each defendant.

[MIS](#)

Re PJJ Pty Ltd, Richard Dunstan Reynolds and Patphair Investments Pty Ltd [2015] VSC 401

Supreme Court of Victoria

Derham AsJ

Real property - restrictive covenants - plaintiffs applied under s84(1) *Property Law Act 1958* (Vic) in three separate proceedings for modification of three restrictive covenants burdening their properties - each covenant prohibited construction of more than one dwelling house on plaintiffs' properties - proposed modification would permit construction of up to three dwellings - plaintiffs relied on ground in s84(1)(c) that proposed modifications would not cause substantial injury to any person having benefit of covenant - purpose of 'single-dwelling' restriction found in each covenant - benefit conferred on beneficiary in precluding more than one dwelling on burdened properties - whether beneficiary would suffer substantial injury should covenants be modified and three dwellings constructed on each property - held: Court satisfied modification of covenants would not substantially injure persons entitled to the benefit of them - orders made.

[PJJ](#)

Pilton Holdings Pty Ltd v Essential Beauty Franchising (WA) Pty Ltd [2015] SASCFC 88

Full Court of the Supreme Court of South Australia

Kourakis CJ, Vanstone & Lovell JJ

Contract - franchise agreement - respondent master franchisor sought declaration it validly terminated master franchise agreement and judgment for debt due on termination - appellant master franchisee sought declarations that purported termination unlawful or that respondent breached *Competition and Consumer Act 2010* (Cth) - primary judge found appellant breached



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agreement and breached s47 by not complying with respondent's directions - primary judge found respondent entitled to terminate agreement and to judgment - held: respondent had role of accrediting approved products and suppliers and was entitled to issue direction relating to list of products or suppliers - respondent's termination for appellants non-compliance with direction was valid - appeal dismissed.

[Pilton](#)



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A Song of Rain

By C.J. Dennis

Because a little vagrant wind veered south from China Sea;
Or else, because a sun-spot stirred; and yet again, maybe
Because some idle god in play breathed on an errant cloud,
The heads of twice two million folk in gratitude are bowed.

Patter, patter ... Boolconmatta,
Adelaide and Oodnadatta,
Pepegoona, parched and dry
Laugh beneath a dripping sky.
Riverina's thirsting plain
Knows the benison of rain.
Ararat and Arkaroola
Render thanks with Tantanoola
For the blessings they are gaining,
And it's raining -- raining -- raining!

Because a heaven-sent monsoon the mists before it drove;
Because things happened in the moon; or else, because
High Jove,
Unbending, played at waterman to please a laughing boy,
The hearts through all a continent are raised in grateful joy.

Weeps the sky at Wipipee
Far Farina's folk are dippy
With sheer joy, while Ballarat
Shouts and flings aloft its hat.
Thirsty Thackaringa yells;
Taltabooka gladly tells
Of a season wet and windy;
Men rejoice on Murrindindie;
Kalioota's ceased complaining;
For it's raining -- raining -- raining!

Because a poor bush parson prayed an altruistic prayer,
Rich with unselfish fellow-love that Heaven counted rare;
And yet, mayhap, because one night a meteor was hurled
Across the everlasting blue, the luck was with our world.

On the wilds of Winininnie
Cattle low and horses whinny,



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Frolicking with sheer delight.
From Beltana to The Bight,
In the Mallee's sun-scorched towns,
In the sheds on Darling Downs,
In the huts at Yudnapinna,
Tents on Tidnacoordininna,
To the sky all heads are craning --
For it's raining -- raining -- raining!

Because some strange, cyclonic thing has happened -- God
knows where --
Men dream again of easy days, of cash to spend and spare.
The ring fair Clara coveted, Belinda's furs are nigh,
As clerklings watch their increments fall shining from the
sky.

Rolls the thunder at Eudunda;
Leongatha, Boort, Kapunda
Send a joyous message down;
Sorrows, flooded, sink and drown.
Ninkerloo and Nerim South
Hail the breaking of the drouth;
From Toolangi's wooded mountains
Sounds the song of plashing fountains;
Sovereign Summer's might is waning;
It is raining -- raining -- raining!

Because the breeze blew sou'-by-east across the China
Sea;
Or else, because the thing was willed through all eternity
By gods that rule the rushing stars, or gods long aeons
dead,
The earth is made to smile again, and living things are fed.

Mile on mile from Mallacoota
Runs the news, and far Baroota
Speeds it over hill and plain,
Till the slogan of the rain
Rolls afar to Yankalilla;
Wallaroo and Wirrawilla
Shout it o'er the leagues between,
Telling of the dawning green.
Frogs at Cocoroc are croaking,



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Booboorowie soil is soaking,
Oodla Wirra, Orroroo
Breathe relief and hope anew.
Wycheproof and Wollongong
Catch the burden of the song
That is rolling, rolling ever
O'er the plains of Never Never,
Sounding in each mountain rill,
Echoing from hill to hill ...
In the lonely, silent places
Men lift up their glad, wet faces,
And their thanks ask no explaining --
It is raining -- raining -- raining!

[C.J. Dennis](#)

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